Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the tenant for a monetary order for the return of the security deposit and compensation under Section 38. The tenant also sought compensation *as if* the landlord had given the tenant a 2 Month Notice to End Tenancy for landlord's use of property. The application is inclusive of an application for recovery of the filing fee for the cost of this application.

The tenant amended the application on May 25, 2015 by replacing the landlord's surname *with the name* on the style of cause. The tenant explained that they inadvertently applied using the surname of the landlord's wife as the couple have differing surnames. The original Notice of Hearing was delivered to the landlord's home address and accepted by the landlord's wife, and the tenant provided evidence to this effect. As a result I accept the tenant's evidence that the named landlord received notice of this hearing; and, that despite the landlord having been served with the application for dispute resolution and notice of hearing by *registered mail* in accordance with Section 89 of the Residential Tenancy Act (the Act) the landlord did not participate in the conference call hearing. The tenant was given full opportunity to be heard, to present evidence and to make submissions. The tenant testified that they served the landlord the same evidence they sent to this hearing.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The undisputed facts before me are as follows. The tenancy ended on June 01, 2014 pursuant to the tenant personally providing the landlord with their notice to end the tenancy on April 30, 2014. The landlord collected a security deposit of $950.00 at the outset of the tenancy and still retains it in full. There was no move in inspection conducted at the outset of the tenancy and no move out inspection conducted at the end of the tenancy. The tenant testified they have not received anything from the landlord respecting the condition of the rental unit since they vacated. The tenant claims that on June 01, 2014 they vacated and left their keys and their written forwarding address with the "Strata President". They did not supply the landlord with

their forwarding address by any other means until they provided the landlord with their forwarding address as stated on their Application for Dispute Resolution – accepted by the landlord's wife on November 18, 2014.

The tenant further testified that the landlord *did not* give them a 2 Month Notice to End Tenancy for Landlord's Use of Property, however the landlord took possession of the unit after the tenant vacated, and is currently residing in it. The tenant testified they vacated the unit on the basis of their Notice to End personally provided to the landlord.

Analysis

The burden of proof in this matter lies with the applicant. On preponderance of the evidence and on the balance of probabilities I have reached a decision.

I find the tenant is not entitled to compensation *as if* the landlord had given them a 2 Month Notice to End for landlord's Use. **Section 51** of the Act prescribes the conditions under which the tenant would be entitled to such compensation, and the tenant's circumstances do not meet the test established by this portion of the Act. As a result, this portion of the tenant's application is **dismissed.**

I find that the tenant may have provided the Strata President with their written forwarding address, however, even on balance of probabilities I have not been provided evidence the *landlord then received* the forwarding address, as required by **Section 38** of the Act. As a result the landlord was not obligated to return the deposit, and therefore the tenant's application for return of the security deposit must be **dismissed.**

None the less, having accepted that the landlord was served with the tenant's Application for Dispute Resolution containing the tenant's' forwarding address, I find that the landlord is now in possession of the tenant's forwarding address and **the landlord must deal with the security deposit pursuant to Section 38 of the Act.** If they do not the tenant may reapply for double the amount the landlord holds in trust.

I Order that the landlord will be deemed to have received this Decision 5 days after the date of the Decision. The landlord then has 15 days from that date to deal with the deposit pursuant to **Section 38** of the Act. In relevant part the Act states as follows:

Section 38 (emphasis for ease)

38(1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do **one** of the following:

38(1)(c) **repay**, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

38(1)(d) **file an application** for dispute resolution to make a claim against the security deposit or pet damage deposit.

and

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must pay the tenant double the amount of the security deposit,** pet damage deposit, or both, as applicable.

Conclusion

The tenant's application is effectively **dismissed**, *with leave to reapply* solely in respect to the security deposit.

The landlord is put on notice they must deal with the security deposit pursuant to Section 38 of the Act, as provided.

This Decision is final and binding on both parties.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Residential Tenancy Act.

Dated: June 09, 2015

Residential Tenancy Branch